IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9122 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANJITSINGH JAGDISHLAL HUDA (PUNJABI)

Versus

COMMISSIONER OF POLICE

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR SUDHANSHU PATEL AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 20/10/2000

ORAL JUDGEMENT

The petitioner, a detenu calls in question the order of his detention, passed by the Police Commissioner, Ahmedabad City, on 11th July, 2000, exercising the powers under Sec.3(2) of the Gujarat Prevention of Anti-social Activities Act (For short "the

Act").

2. The facts giving rise to the present petition may in brief be stated. Against the petitioner two cases under the Bombay Prohibition Act came to be filed, one complaint came to be lodged with Rakhiyal Police Station in connection with the offences punishable under Sections 66(1)(b), 65(a)(e), 81, 98, 99 and 116(B). He was found in possession of liquor to the tune of Rs.2700/- without any pass or permit. Second complaint came to be lodged in Amaraiwadi Police Station relating to the offences punishable under Sections 66(1)(b), 65(a)(e) and 81 of he Bombay Prohibition Act alleging that he was found in possession of liquor and beer to the tune of Rs.43,800/for which he was not having any pass or permit. The Police Commissioner when checked the record, could see that the petitioner was a bootlegger and was dealing in liquor on a large scale. He was thereby injuring the public health. Not only that but he being a headstrong person, no-one was ready to give statement against him as every one was worrying about his personal safety. He could also see that bringing the liquor from the another State, the petitioner was selling and distributing the same to different persons in different areas and without any obstruction, he was carrying his illegal activities. He used to beat or resort to coercive measures so as to make the people bend his way. Any one who dared to oppose him, or when asked, did not help him in his illegal activities, had to face dire consequences. The Police Commissioner, could see that to control his such illegal activities harmful to the public order & health, the only way out was to pass the order under the Act and detain the petitioner. He, therefore, passed the order on 11th July, 2000 and arrested the petitioner, with the result, at present the petitioner is under detention. He has, therefore, filed this application challenging the legality, validity and constitutionality of the impugned order.

3. On different grounds, the learned advocate for the petitioner made attempt to assail the order in question, but when the query was made, he tapered off his submissions confining to the only ground namely delayed consideration of representation. In this regard it is submitted that on 1st August, 2000, on behalf of the petitioner, his advocate made representation through the Jail Authority. The jail authority received the same on 4th August, 2000. The Jail Authority took the signature of the petitioner on 12th August 2000 and on the same day, the same was transmitted to the State Government. The office of the Additional Chief Secretary received it

on 16th August, 2000. The Section Officer, then undergoing the necessary formalities, placed the same before the Additional Secretary who took the decision on 19th August, 2000. According to the petitioner, there is thus delay of two days and that delay is fatal.

4. In reply to such contention, Mr. Sudhanshu Patel, the learned AGP contends that the delay itself cannot be a ground to upset the order, if the delay is explained. However, a short delay cannot be given undue importance. In support of his such contention, he draws the attention to a decision of the Supreme Court rendered in the case of Smt. Kamlabai Vs. Commissioner of Police, Nagpur and ors. JT 1993(3) SC 666. He also submits that in the case on hand, on going through the file, it appears that on 17th and 18th August, 2000, the Additional Chief Secretary was out of station for his official work and when on 19th August, 2000, he returned, immediately on the same day, decision was taken qua the representation received. There is, thus, no delay.

5. It is held by the Supreme Court in the Case of Harish Pahwa vs. State of U.P. and others, AIR 1981 SC 1126 as under;

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look with equanimity upon delay when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take a matter of such vital import. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

6. In view of such decision the concerned authority is expected to take the matter of such vital importance on hand immediately soon after the receipt of the

representation, the same is to be dealt with continuously unless it is absolutely necessary to wait for some assistance in connection with the same. In the case on hand, the representation when received on 16th August, 2000, ought to have been considered immediately, instead that the same was considered on 19th August, 2000 and appropriate order was passed on the same day. Thus, there is a delay of two days. In the absence of any satisfactory explanation, the delay must be held to be fatal. In the decision cited by the learned AGP also no doubt, it is held that short delay cannot be given undue importance, but it is also made clear that there is appealing explanation thereof is available on record. The authority has, therefore to explain the delay filing affidavit which is not done in the present case.

7. At this stage Mr. Patel, the learned AGP submits from his file that the Additional Chief Secretary was not available in the office, as he had gone out for official duty on 17th and 18th August, 2000. The delay in view of the fact must be termed a reasonable and not fatal. Whatever is with the AGP in brief cannot be considered to be the explanation on record. But even if the same is to be treated as explantation on record for a while, the same cannot be accepted in law. The Supreme Court in the case of Rajammal vs. State of Tamil Nadu and another AIR 1999 SC 684 has held that mere absence of the Minister from the headquarter is not sufficient to justify the delay. The delay if not explained in considering and disposing the representation of the detenu, the detention is vitiated. The decision can be pressed into service of the petitioner. In the case on hand, the Additional Chief Secretary had gone out for two days, but as per the decision of the Rajmal's Case (Supra), absence of the officer from the headquarter is not a sufficient cause to justify the delay. The representation in this case when not considered promptly and as there is a delay of two days, the same is fatal to the petitioner. The impugned order on this count is vitiated and is therefore, required to be quashed and set aside.

8. For the aforesaid reasons, the application is allowed. The impugned order of detention dtd. 11th July, 2000 passed by the Police Commissioner, Ahmedabad City is hereby quashed and set aside. The petitioner-detenu be set at liberty forthwith if no-longer required in any other case. Rule accordingly made absolute.

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